

DEPUTY JUDGE ADVOCATE'S OFFICE
HEADQUARTERS, 7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 407

9 August 1947

UNITED STATES

v.

Friedrich SCHEILZ.

Case No. 12-1852.

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 7-9 August 1946, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws of War.

Particulars: In that Friedrich SCHEILZ, a German national, did, at or near Idesheim, Germany, on or about 17 August 1944, wilfully, deliberately and wrongfully kill a member of the United States Army, believed to be Patsy ROCCO, who was then a surrendered and unarmed prisoner of war in the custody of the then German Reich, by shooting him with a rifle.

III. SUMMARY OF EVIDENCE: In the month of August 1944, an American flyer was captured near Idesheim, Germany, having apparently parachuted from his disabled plane the day before. He was taken by his captor to a prisoner of war camp at Idesheim and thereafter removed by accused SCHEILZ under orders to take him to Bitburg for confinement. This movement was made on foot and on the way the flyer was shot and killed by accused SCHEILZ.

IV. EVIDENCE AND RECOMMENDATIONS:

FRIEDRICH SCHEILZ

Nationality: German

Age: 54

Civilian Status: Policeman

Party Status:	None
Military Status:	Unknown
Place:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: In August 1944, near Idesheim, Germany, an unnamed American flyer was captured by a German civilian (R 7-9, 17, 27). He asked his captor about the possibilities of escape (R 25-27). The airman was delivered to a prisoner of war camp at Idesheim (R 29) and later taken by the accused to Idesheim (R 33) and there confined (R 34). The prosecution called only one eyewitness to the shooting of the flyer, who testified that in the afternoon (R 71) the captured flyer was seen on the Trier-Bitburg highway, walking approximately five meters in front of the accused (R 43). His hands were behind his body, chained at the wrist. As the flyer reached an intersection, he turned to the right, the accused followed and fired one shot at him with a carbine (R 44), and the flyer fell down (R 45). Prior to the shooting, the accused was pushing a bicycle (R 54). He and his captive were walking faster (R 49, 50), went around a tree (R 52), and proceeded along the cross road (R 53). No instructions had been given to the flyer to turn at the intersection (R 54). The record contains a conflict in the testimony concerning the action of the flyer as he went around the tree. In one place the witness averred that the flyer began to run (R 53) and in others that he walked rapidly (R 84, 85, 93), and that his pace could have quickened because the road sloped downhill (R 90). However, at the time he was shot, the flyer had resumed a normal pace (R 92). As the flyer left the main road, the accused followed, leaned his bicycle against the tree, made a few jumps, slipped slightly, and then shot (R 54). He didn't aim, but shot quickly (R 55). At this time, the accused was about three meters from the cross road (R 55) and the flyer was about ten meters ahead (R 59), in the center of the cross road (R 81). The

flyer fell, parallel to the road, upon his back (R 81), shot through the back of the neck (R 118). The accused then left the scene (R 84).

Another prosecution witness testified that the accused came to his home (R 128), directed him to go to the scene of the shooting and guard the body (R 129), and that the accused, on returning to the scene, removed the chains from the hands of the flyer (R 130). The body was thereafter removed to Bitburg where the accused and the witness examined the identification tag of the flyer, which read, "Patsy Rocco" (R 131). Subsequently the body was buried in the cemetery of Bitburg (R 158). The grave was later opened and the body identified as that of an American aviator named Patsy Rocco (R 160; P-Ex 9).

Evidence for Defense: The accused, a policeman, testified that he was directed by a superior to secure a captured American airman at Idesheim (R 232), handcuff him to prevent an escape (R 233) and deliver him to Bitburg, 19 or 20 kilometers from Idesheim (R 234). He warned his captive against an attempt escape (R 235) and took him to Idenheim, three kilometers away (R 237), where he armed himself with a carbine, pistol and bayonet (R 239). He further bound the flyer's hands behind his back with a chain and lock (R 242). While proceeding along the road to Bitburg (R 245), the flyer suddenly jumped to the right and up a slope. The accused followed, caught the flyer and warned him again against escape, under the penalty of being shot (R 246). Later at a point approximately 35-40 meters from a cross road, the flyer left the road and started toward an adjoining forest (R 247). The accused called upon him to halt (R 248), ran after him, took his carbine from his shoulder (R 249), slipped to the ground accidentally, and arose. At this time he called "halt" twice and then shot at the flyer who was already on the cross road (R 250), but he intended to shoot over him (R 251). The flyer was about 12 meters from the main road (R 252). P-Ex 1 is marked with an "f" with a circle around it to indicate the location of the flyer when the accused fired his carbine, and with a

"G" to indicate the location of the accused at the time he fired the shot (R 252). The flyer died where he fell; the shot having gone through his neck (R 254, 255).

The accused further testified that he posted a guard at the body and telephoned his superior officer, reporting the shooting (R 256). He then returned to the scene and removed the body from the road (R 257). The accused denied having a bicycle at the time of the shooting (R 266). A defense witness testified that by custom and usage, a policeman in charge of a prisoner of war may in his own discretion shackle him (R 204), and in case of attempted escape, is not required to either call upon him to halt or fire a warning shot (R 205). Another witness testified that the accused had a reputation in his community for being a decent and honorable man (R 227).

Sufficiency of Evidence: The victim of the shooting inquired generally of his initial captor of possibilities of escaping. The only eyewitness to the shooting testified that the victim turned at a road intersection, apparently without any instructions so to do, and went around a tree. His testimony, in its most favorable light for the prosecution, is not too clear as to whether the victim was walking rapidly or running slowly. Thus, it appears that the victim had considered escaping not long before the shooting and that the evidence for the prosecution does not sufficiently eliminate the possibility that the victim was in fact trying to escape as contended by the alleged offense was proved beyond a reasonable doubt. The findings of guilty are not warranted by the evidence.

Petitions: An undated Petition for Review was filed by defense counsel Richard A. Ruppert. Petition for Clemency were filed by Edward B. Jackson, Colonel, Infantry, (a member of the Court), 26 November 1946, and the accused, 31 August 1946. Attached to the

Petition for Review by Richard A. Ruppert, defense counsel, is his final argument on behalf of the accused presented to the Court but not stenographically reported in the record. It has been considered as a part of the Petition for Review.

Recommendation: That the findings and sentence be disapproved.

V. QUESTIONS OF LAW:

Jurisdiction: No general question of the jurisdiction of a military tribunal to try offenses, commonly known as war crimes, was raised. However, the jurisdiction of this particular court to try the accused was questioned. This question was raised in the "dissenting opinion" filed by the legally trained member of the Court which heard the case. That opinion is a part of the Petition for Review filed by Richard A. Ruppert, defense counsel. The Court was appointed by Special Orders Number 123, paragraph 36, 17 May 1946, Headquarters, Third U. S. Army (R 1, 2). A copy of the order is attached to the record of trial, together with a letter by the Deputy Theater Judge Advocate for War Crimes, Headquarters, U. S. Forces, European Theater, 7 August 1946, which letter superseded a letter by the Deputy Judge Advocate for War Crimes, 31 July 1946, also attached to the record of trial, referring the cause to said Court. The contention is that paragraph 11 of the letter, Headquarters, U. S. Forces, European Theater, 11 July 1946, revoked the authority of a Court appointed by Third U. S. Army to do more than to complete the trial of war crimes cases then on trial. The jurisdiction of the Court appears to be doubtful. However, in view of the fact that it is not believed that the findings of guilty were warranted by the evidence, no further discussion of this question is necessary.

VI. CONCLUSIONS:

1. It is recommended that the findings and sentence be disapproved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ Oliver C. Hardy
/t/ OLIVER C. HARDY
Attorney
Post Trial Branch

Having examined the record of trial. I concur.

this 14 th day of October 1947.

/s/ C. E. Straight
/t/ C. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes